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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~477.~~ 359

WILLIAM H. STARK, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 12, 1871.

Dec. 1871

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No. 477.

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INDEX.

	Original.	Print.
Petition	1	1
Traverse and pleas	4	2
Replication	5	3
Final judgment by the court	7	4
Motion for rehearing and affidavits filed therewith	8	4
Order of court refusing said motion	14	7
Application for allowance of appeal	15	7
Order of court allowing same	15	7
Motion to vacate appeal, &c., and order refusing same	16	7
Finding of facts and of law	18	8
Certificate	44	15

1 *Petition.*

United States Court of Claims.

W'm H. Stark
vs.
The United States.

To the honorable the United States Court of Claims:

The petition of W'm H. Stark, a citizen of the United States, and a resident of Savannah, in the State of Georgia, showeth:

That, in the month of January, 1865, your petitioner was the owner and in possession of ninety-one bales of Sea Island cotton, classed as good quality, and weighing 30,156 pounds, and one hundred and thirty-six bales of upland cotton, of good quality, weighing 66,511 pounds, bearing various marks, and then stored in said city of Savannah.

That, in the said month of January, 1865, after the occupation of said city by the United States forces, your petitioner, in obedience to orders from the military authorities of the United States then holding and governing said city, reported said cotton as his and in his possession; and afterwards, to wit, in the same month of January, all of said cotton was seized and taken possession of by L't Col. H. C. Ransom, acting, as your petitioner is informed and believes, under the orders of the War Department, but without the consent of your petitioner and against his will; and that no part of said cotton, or the proceeds thereof was appropriated in any way to the use of the Army and Navy of the United States; but that said cotton was turned over by the officer seizing it, to an agent of the Treasury Department, by whom it was sold and the nett proceeds thereof paid into the Treasury of the United States.

2 Your petitioner avers that he is unable to state the precise amount for which said cotton was sold, or the expenses attending the seizure, shipment, transportation and sale; but he states, on information and belief, that the said cotton was sold by the agent of the Treasury Department, as follows, to wit, for seventy-five cents per pound, the aggregate of sale being seventy-two thousand five hundred dollars and twenty-five cents, and the expenses thereof did not exceed five per cent., and the nett proceeds thereof which have been paid into the Treasury of the United States, amount to sixty-eight thousand nine hundred and seventy-five dollars and twenty-five cents.

Your petitioner further shows that his cotton had never been abandoned or forfeited, nor become liable to confiscation under any of the acts of Congress, in that behalf made and provided; and that it was not liable to seizure or capture, under the laws of nations nor under the laws and usages of war; and that no proceedings for the purpose of condemning said cotton have ever been instituted in any court or before any tribunal.

Your petitioner avers that his property, having been taken possession of by the United States Government and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor, by paying him all said cotton was reasonably worth at the time and place it was so taken from him as aforesaid.

Your petitioner further shows, that said cotton was worth at the time of its seizure, as he verily believes, the sum of $72,500 25, which amount he is entitled to recover from the United States, under the implied contract as above.

Your petitioner further shows that, if there has been a valid and lawful capture of said cotton, which he understands is asserted by the United States, he is nevertheless entitled to receive the nett proceeds of it, amounting to the said sum of $68,975 25, as he verily believes, under the provisions of the act of Congress, approved March 12, 1863, entitled, "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States."

3 Your petitioner further shows that he has never in any way voluntarily aided, abetted, or encouraged the late rebellion against the Government and authority of the United States.

COOLEY & CLARKE,
Sol'rs for Claimant.

William H. Stark, being duly sworn, deposeth and saith that he is the claimant named in the foregoing petition, and that no assignment or transfer of said claim or any part thereof, or any interest therein, has been made; that he is justly entitled to the amount therein claimed from the United States, after allowing all just claims and offsets, and that he believes the facts stated in said petition to be true.

W'M H. STARK.

Subscribed and sworn to before me this 15th day of May, A. D. 1867, at Savannah.

H. C. HOLCOMBE,
Clerk U. S. Dist. C't for S. D. Ga.

P. O. address of claimant, Savannah, Ga.
P. O. address of counsel, Cooley & Clarke, Washington, D. C.

4 In the United States Court of Claims. December term, A. D. 1868.

WILLIAM H. STARK
vs.
THE UNITED STATES. } No. 2794.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $68,975 25, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say, that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claim-

ant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say, that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of fraud in insurrectionary districts within the United States," approved M'ch 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

5 United States Court of Claims.

WM H. STARK
vs.
THE UNITED STATES. } No. 2794.

Replication.

1. And now comes the claimant, by his solicitors, and for replication to the first plea of the defendant, herein pleaded, says that he denies that the said claimant did not, within two years after the suppression of the rebellion, prefer his claim to the proceeds of the property mentioned and described in said petition, in the Court of Claims as provided by the 3d section of the act of Congress, approved March 12, 1863, entitled, "An act to provide for the collection of abandoned property," &c., as alleged in the said defendant's plea. And this he prays may be inquired of by the court.

Wherefore the said claimant prays judgment.

COOLEY & CLARKE,
Sols. for Claimant.

Filed Jan'y 13, 1869.

6 2. And for replication to the second plea of the said defendant, herein pleaded, this claimant says that he denies that the said claimant, at the time of filing his said petition herein, was an alien, or that the said seizure and taking possession of the said property named in said petition, and the said several acts and doings of the defendants,

their officers, servants, and agents therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress, entitled

as alleged in the said plea. And this, he prays may be enquired of by the court.

COOLEY & CLARKE,
Sols. for Claimant.

7 In the Court of Claims.

WILLIAM H. STARK
vs.
THE UNITED STATES. } 2794.

And now, to wit, 28th of March, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said William H. Stark take nothing by his suit, and that his petition be dismissed.

By the court.

A true copy of record.

8 United States Court of Claims. December term, 1868.

WILLIAM H. STARK
vs.
THE UNITED STATES. } No. 2794.—Motion for a rehearing.

Motion for a rehearing.

Comes now the claimant, by his solicitors, and moves the court to grant a rehearing in said case; and for cause thereof shows here to the court the following:

1. The court erred in holding that the purchase by the claimant of the interest of his partners in the firm of which he was a member, in order to enable them to pay their northern debts, is evidence that the claimant chose voluntarily to reside in the rebel States.

2. The court erred in holding that it appeared from the evidence that the residence of the claimant in the rebel States was voluntary.

3. The decision of the court ignores the presumption in favor of the loyalty of the claimant, arising from his being a citizen of a loyal
9 State; and this presumption being in his favor, it was only necessary for him to show that he rendered no aid or comfort voluntarily to the late rebellion.

4. The evidence, taken together, shows that the claimant rendered no voluntary aid or comfort to the rebellion, and thus rebuts the presumption arising from his residence in a State in rebellion.

5. The court erred in holding that the purchase of goods, wares, and merchandise, supposed to have run the blockade, was evidence of disloyalty, or of an intent to give aid and comfort to the rebellion.

6. The testimony of Duggan and Pepper are balanced by the testimony of claimant and Williams, and the court erred in giving it any weight.

7. Even if the claimant did the acts testified to by Duggan and Pepper, the same testimony shows that they were not voluntary.

8. Because, if a rehearing is granted, the claimant will be able to prove that the purchase of the interest of his partners in the mercantile firm of which he was a member, was not only a necessity to secure the payment of the debts of the firm due in the north, but to preserve the proceeds of many years of labor.

9. Because the claimant can show that, upon the capture of Savannah, and before the seizure of his cotton, he took the oath of amnesty required by the proclamation of the President, dated 8th of December, 1863, and has faithfully observed the same ever since.

10. Because it is evident from the opinion that the case has not been maturely considered, and justice and equity require a new trial.

COOLEY & CLARKE,
Sol's for Claimant.

10 *Affidavit of W'm H. Stark.*

STATE OF GEORGIA, *Chatham County, ss:*

Personally appeared William H. Stark, of the city of Savannah, county and State aforesaid, one of the late firm of "Stark, Alexander & Clark," who, being duly sworn, deposes and says: That said firm of "Stark, Alexander & Clark" was dissolved on the first day of July, in the year eighteen hundred and sixty-one; and that at and before said dissolution, the other partners of said late firm, William E. Alexander and William Clark, being strongly southern in their feelings and proclivities, had exhibited very bad and inimical feelings towards him, and raised difficulties and exercised bad treatment towards him which have resulted in litigation now pending; that, on account of these things, and with a view to leave the South and go North, he offered to sell out to his said copartners his entire interest in the partnership business and assets, which offer they positively refused to accept; that, at the time of said dissolution as aforesaid, the amount owed by the firm was twenty-six thousand seven hundred and thirty-nine dollars and seventy-seven cents, and that the whole amount then due to said firm was one hundred and five thousand one hundred and forty-three dollars, ($105,143,) the balance of assets over the firm liabilities amounting to seventy-nine thousand four hundred and three dollars and twenty-three cents, ($79,402 23,) exclusive of the stock of goods; and that of said debts due by said firm as aforesaid, the sum of over nine thousand dollars, ($9,000,) was due to northern creditors of said firm; and this deponent further says that he insisted that the amount due to said northern creditors should be promptly paid, while opportunity remained, but that his said partners violently opposed the payment of the same.

And this deponent further says that, in order to secure the payment of said debts and protect his own interest in said partnership
11 property and assets, having failed to obtain the consent of his said partners, that any portion of the assets of said firm should be applied to the payment of the debts due said northern creditors as aforesaid, and having been unable to sell out his interest to his partners, so as to be able to leave the South and go North as aforesaid, he was compelled to purchase the goods of said firm, and that he did purchase said stock of goods; and further, that, at that time exchange on New York was very difficult to obtain, and was constantly becoming more so, and that this deponent, feeling certain that the northern creditors of said firm would not be paid unless by himself, obtained exchange and remitted to said northern creditors the several amounts due them, at his own risk, secretly and against the laws of the late government of the Confederate

States of America. And this deponent further says that he is assured that unless he had remained and taken charge of said goods so purchased as aforesaid, said northern debts would never have been paid, neither would he have obtained any portion of the property or assets of said firm.

And this deponent further says that his farm in the State of Connecticut, and all his property thereon, was not worth, at that time, more than three thousand dollars ($3,000) over and above the liabilities; and that all his said property in the State of Connecticut would not have been sufficient to pay more than a small percentage of the debts of said firm, due in New York City. And this deponent further says that he, at this time, feels thoroughly assured that if he had left the South in July, 1861, and gone North, he would have lost fifty thousand dollars, ($50,000,) which was all of his earnings and accumulations, during a residence and business of thirty years in the Southern States.

And this deponent further says that he took the "amnesty oath" on the 19th day of January, A. D. 1865, and herewith encloses
12 certificate of same of that date; and that previous to taking said amnesty oath, he had taken the oath of allegiance to the Government of the United States, certificate of which, to the best of deponent's knowledge, has previously been forwarded to his attorneys in Washington City.

W'M H. STARK.

Sworn to and subscribed before me this May 18, 1869.

JA'S McPHERSON,
Clerk U. S. Dist. Court, So. Dist. of Ga.

Certificate of oath of amnesty.

OFFICE PROVOST MARSHAL,
Savannah, Ga., Jan'y 19, 1866.

I hereby certify that I have this day administered the oath of amnesty to W'm H. Stark, county of Chatham, State of Georgia.

W'M T. EASTON,
Capt. and Pro. Marshal.

Affidavit of Henry P. Richmond.

STATE OF GEORGIA, *Chatham County:*

Personally appeared Henry P. Richmond, of the city of Savannah, county and State aforesaid, who, being duly sworn, deposes and says:

That, during the fall of the year eighteen hundred and sixty-one, he was in the employment of William H. Stark, in said city, as his bookkeeper, and that, in the month of July, in said year, the firm of Stark, Alexander & Clark, composed of said William H. Stark, William E. Alexander, and William Clark, was dissolved.

13 And this deponent further says that, of his own knowledge, said William H. Stark bought out the stock of goods of said firm of Stark, Alexander & Clark, which purchase was exclusive of the debts due to said firm, for the sum of twenty-six thousand two hundred and eighty-three dollars and seventy-seven cents, ($26,283 77,) and that the debts due said firm, amounting to one hundred and five thousand one hundred and forty-three dollars, ($105,143 00;) and that the amount of debts due by said firm was twenty-six thousand seven hundred and thirty-seven dollars and seventy-seven cents, ($26,737 77;)

and further, that the portion of the said indebtedness of said firm, due in New York was paid during the month of July, eighteen hundred and sixty-one, as is shown by the books.

And this deponent further says that said William H. Stark had much difficulty with his former partners at that time, of such a nature that this deponent feels assured said William H. Stark would have suffered great and irreparable loss if he had left Savannah and gone North, under the business difficulties that existed when said firm was dissolved in July, eighteen hundred and sixty-one.

HENRY P. RICHMOND.

Sworn to and subscribed before me this 18th May, 1869.

JA'S McPHERSON,
Clerk U. S. Dist. Court, So. Dist. of Ga.

14 In the Court of Claims.

W'M H. STARK
vs.
THE UNITED STATES. } 2794.

Ordered, That the motion for a new trial in this cause be refused, and the rule discharged.

By the court.

15 United States Court of Claims. Dec. term, 1869.

WILLIAM H. STARK
vs.
THE UNITED STATES. } 2794.

And now comes the claimant, by his attorneys, and moves the court for the allowance of an appeal to the Supreme Court of the United States, from the judgment rendered in said cause 28 March, 1870, in favor of the defendants, and dismissing the petition of said claimant.

COOLEY & CLARKE,
Solicitors for Claimant.

Filed in clerk's office, April 12, 1870.

Qrdered, That the appeal as prayed in this cause, from the judgment of March 28, 1870, be allowed.

By the court.

APRIL 12, 1870.

16 United States Court of Claims. Dec. term, 186[illegible].

WILLIAM H. STARK
vs.
THE UNITED STATES. } 2794. Motion.

Comes now the claimant, by Cooley & Clarke, his solicitors, and moves the court here that the appeal to the Supreme Court, heretofore allowed, and the judgment dismissing the petition, rendered at this term, be vacated and set aside, and the said cause remanded to the general docket for additional evidence; and for cause thereof, shows the following:

That it appears from the record that the said claimant, on the 19th

day of January, 1865, took the amnesty oath prescribed by the President's proclamation of Dec. 8, 1863, and the Supreme Court has decided, since said petition was dismissed, that the taking and subscribing said oath wipes out any act of disloyalty of which the claimant may have been guilty, and entitles him to maintain his action in this court.

COOLEY & CLARKE,
Sol's for Cl'm't.

Filed May 2d, 1870.

17 United States Court of Claims. Dec. term, 1870.

WM H. STARK
vs.
THE UNITED STATES. } No. 2794.

The motion filed in this cause on the 2d May, 1870, by the counsel for claimant, was denied.

By the court.

DEC. 21, 1870.

A true copy of record.

18 United States Court of Claims. December term, A. D. 1869.

WM H. STARK
vs.
THE UNITED STATES. } No. 2794.

Finding of the court on the facts.

From the evidence in this case the court finds the facts to be as follows:

1. That, prior to the surrender of the city of Savannah, in the State of Georgia, in December, 1864, the claimant was the owner and in possession of ninety-one bales of Sea Island, and one hundred and thirty-six bales of upland cotton, all of which cotton was stored in said city of Savannah at the time of the surrender or capture of said city.

2. That all of said cotton, after the capture of said city, was seized by officers in the military service of the United States, and subse-
19 quently shipped to Simeon Draper, the United States cotton agent at New York, by whom it was sold for the benefit of the United States, and that the net proceeds thereof have been paid into the Treasury of the United States.

3. That the said claimant was a native and citizen of the State of Connecticut, where he had a place or farm which he called his home, and where he spent six months of every year; that he voted, and was regularly taxed in Connecticut, and that his home, when he was absent from it, was occupied by some member of his family, or his servants.

4. That, for a number of years before the war, the said claimant was engaged in mercantile pursuits in the city of Savannah, as a member of the firm of Stark, Alexander and Clark, which firm was engaged in a large general grocery and commission business; that the said claim-
ant had a house in Savannah, where he resided six months in the
20 year, or during the winter and fall seasons, and that he exercised none of the rights of citizenship in the State of Georgia.

5. That, after the war commenced, the claimant's partners put an estimate upon the partnership property at the rate whereof they were

willing to purchase his interest or sell their own. The claimant elected to purchase their interests and remain within the insurgent territory. He did so remain and continued the business on his own account. The amount paid by the claimant to his partners was $26,283 77, but the outstanding debts due to the partnership, amounting to $105,143, remained unsettled between him and his partners.

6. That the first sequestration act of the Confederate States was approved August 30th, 1861, the first four sections of which reads as follows:

"SEC. 1. *Be it enacted by the congress of the Confederate States*
21 *of America*, That all and every the lands, tenements, and hereditaments, goods, and chattels, rights, and credits, within these Confederate States, and every right and interest therein held, owned, possessed, or enjoyed, by or for any alien enemy since the twenty-first day of May, one thousand eight hundred and sixty-one, except such debts due to an alien enemy as may have been paid into the treasury of any one of the Confederate States prior to the passage of this law be, and the same are hereby, sequestered by the Confederate States of America, and shall be held for the full indemnity of any true and loyal citizen or resident of these Confederate States, or other person aiding said Confederate States in the prosecution of the present war between said Confederate States and the United States of America, and for which he may suffer any loss or injury under the act of the
22 United States to which this act is retaliatory, or under any other act of the United States, or of any State thereof authorizing the seizure, condemnation, or confiscation of the property of citizens or residents of the Confederate States or other persons aiding said Confederate States, and the same shall be seized and disposed of as provided for in the act: *Provided*, however, when the estate, property, or rights to be affected by this act were, or are within some State of this confederacy which has become such since said twenty-first day of May, then this act shall operate upon, and as to such estate, property, or rights, and all persons claiming the same, from and after the day such State so became a member of this confederacy, and not before: *Provided*, further, that the provisions of the act shall not extend to the stocks or other public securities of the confederate government, or of any
23 of the States of this confederacy held or owned by any alien enemy, or to any debt, obligation, or sum due from the confederate government, or any of the States to such alien enemy: *And provided, also*, that the provisions of this act shall not embrace the property of citizens or residents of either of the States of Delaware, Maryland, Kentucky, or Missouri, or of the District of Columbia, or the Territories of New Mexico, Arizona, or the Indian Territory south of Kansas, except such of said citizens or residents as shall commit actual hostilities against the Confederate States, or aid and abet the United States in the existing war against the Confederate States.

"SEC. 2. *And be it further enacted*, That it is, and shall be, the duty of each and every citizen of these Confederate States speedily to give information to the officers charged with the execution of this law,
24 of any and every lands, tenements, and hereditaments, goods and chattels, rights and credits, within the confederacy, and of every right and interest therein held, owned, possessed or enjoyed by or for any alien enemy as aforesaid.

"SEC. 3. *Be it further enacted*, That it shall be the duty of every attorney, agent, former partner, trustee, or other person, holding or controlling any such lands, tenements, or hereditaments, goods or chattels,

rights or credits, or any interest therein, of or for any such alien enemy, speedily to inform the receiver, hereinafter provided to be appointed, of the same, and to render an account thereof, and so far as is practicable, to place the same in the hands of such receiver; whereupon such person shall be fully acquitted of all responsibility for property and effects so reported and turned over. And any such person willfully failing to give such information and render such account shall be
25 guilty of a high misdemeanor, and, upon indictment and conviction, shall be fined in a sum not exceeding five thousand dollars and imprisoned not longer than six months, said fine and imprisonment to be determined by the court trying the case, and further be liable to be sued by said Confederate States, and subjected to pay double the value of the estate, property, or effects of the alien enemy, held by him or subject to his control.

SEC. 4. It shall be the duty of the several judges of this confederacy to give this act specially in charge to the grand juries of these Confederate States, and it shall be their duty at each sitting well and truly to enquire and report all lands, tenements, and hereditaments, goods and chattels, rights and credits, and every interest therein, within the jurisdiction of said grand jury, held by or for any alien enemy, and it
26 shall be the duty of the several receivers, appointed under this act, to take a copy of every such report, and to proceed in obtaining the possession and control of all such property and effects reported, and to institute proceedings for the sequestration thereof in the manner hereinafter provided." And that the said act was rigidly enforced in the city of Savannah.

7. That, after the claimant had purchased the interests of his partners in the firm of Stark, Alexander and Clark, he secretly transmitted, through a friend who escaped through the lines, and in violation of the rebel sequestration act, the *friends* to pay the debts of said firm due in New York City; and that the debts thus paid by the claimant amounted to the sum of $15,630 80, the receipts for which the claimant received after the close of the war.

27 8. That during the war, that is, from 1861 to 1866, inclusive, the property of the claimant in the State of Connecticut, was regularly assessed, and the taxes thereon paid by the agents of the claimant; that the assessed value of the property, in any one year, was less than $7,000; and that there was a mortgage on the real estate for the sum of $2,000.

9. That the claimant returned from Connecticut to the South, in November 1860, taking his wife with him.

10. That the claimant did not subscribe to confederate loans, nor purchase confederate bonds for himself, and discouraged others from doing so; but he subscribed for, and purchased of the Confederate States' agent, in his own name, bonds for, and as the agent of, one McConnell, for whom he sold a farm.

11. That, at the commencement of the rebellion, the said claimant was aged about 42 years; and that he never entered the rebel service,
28 nor took up arms against his lawful Government.

12. That the claimant, during the war, replenished his stock in part with merchandize which he supposed had been introduced into the rebellious States in violation of the blockade established by the United States; that he entered into a speculating project with one Sama, by which they sought to benefit themselves by dealing largely in merchandize, some of which had been brought into Wilmington, N. C., in viola-

tion of the blockade; that the said joint purchases were made at Wilmington, by Sama, in open market, and amounted to $180,000; that the transactions of the claimant during the war, in goods supposed to have been brought into the rebellious States in violation of the blockade, and other merchandize and provisions, ranged from $200,000 the first year, up to $500,000 or $600,000 a year in subsequent years, in rebel or
29 inflated currency; and that the claimant had no connection with the blockade-running, or persons engaged therein, but purchased said goods, wares, and merchandize, either in open market or from persons who had thus purchased them.

13. That the claimant never dealt in any munitions of war. That the claimant sold goods and merchandize to rebel quartermasters and commissaries, they sometimes calling for them simply as a customer, and sometimes making a formal demand; sometimes paying for the articles when obtained, and at other times having them charged; that in two instances the merchandize of the claimant was impressed, in one of which they were not paid for; and that where the goods were charged on the books of the claimant, they were charged to the officer ordering them by his name and title.

14. That, in 1863 or 1864, every one in Savannah not subject to other military duty, was enrolled in the home guard, the claimant among others; that the claimant never drilled or paraded, guarded prisoners, or performed any military duty; and that when ordered out by the major, the claimant, with others of the home guard, did police duty, and once attended a casual fire in that capacity.

15. That near the close of the war, after the law compelled the claimant to go into the service, he got himself appointed, with other
30 Union men, upon a hospital committee, whose duty it was to look after the hospitals, which were under the charge of the municipal authorities; and that he obtained this place with a view to keeping out of the military service.

16. That, at the commencement of the rebellion, there was intense excitement in Savannah against persons supposed to be loyal to the United States, and opposed to the rebellion, which resulted in the formation of vigilance committees and clubs, one of which was called the Rattlesnake Club; that northern men particularly were suspected and kept under surveillance; that these committees and clubs seized and committed personal violence on several persons, paraded the streets openly, and created a state of feeling which prevented loyal men from expressing their opinions, or openly recognizing each other; and that this state of feeling and hostility to those who were suspected of adherence
31 to the Union continued throughout the war.

17. That the conscription laws of the Confederate States were rigidly enforced in the city of Savannah, and throughout the State of Georgia; that the claimant was liable to conscription under the last conscription act passed by the rebel congress; and that Union men, and others opposed to entering the rebel service were compelled to resort to various expedients to evade that service.

18. That the net proceeds of the claimant's cotton, which have been paid into the Treasury of the United States, without deducting the internal revenue tax of two cents per pound, amounted to the following:

91 bales of Sea Island at $231 79 per bale	$21,092 89
136 bales of upland at $175 33	23,844 88
Making a total of	$44,937 77

32 *Conclusions of law by the court.*

And upon the foregoing facts the court decides as conclusions of law:

1. That the claimant gave aid and comfort to the late rebellion, within the meaning of the abandoned or captured property act. (12 Stat. L., p. 820,) and of the acts amendatory or in furtherance thereof.

2. That judgement should be for the defendants, dismissing the petition of the claimant.

By the court.

33 United States Court of Claims. December term, A. D. 1869.

WM H. STARK
vs.
THE UNITED STATES. } No. 2794.

The claimant proposed the following findings of fact, which were denied by the court:

That, after the war commenced, a dispute arose between the said claimant and his partners as to the payment of the debts owing by the firm at the North, the claimant insisting on their payment, and the other partners proposing to make return of, and pay them to the rebel authorities under the sequestration acts of the Confederate States; that the said claimant endeavored to sell out his interest in the firm to his partners, so that he could leave the South; that his partners
34 placed so low an estimate on his interest, that they could not agree; that the claimant, in order to protect himself, and secure the payment of the northern creditors of the firm, purchased the interest of his partners in the stock of goods then on hand, for the sum of $26,283 77; that when the claimant made this purchase, the outstanding debts due to said firm amounted to the sum of $105,143, which remained unsettled between the said partners, and that after said purchase the said claimant continued the business on his own account.

That the claimant returned from Connecticut to the South in November, 1860, taking his wife with him; that when in New York, on his way to Savannah, he declared "That things looked gloomy for the South; that the people there seemed to be crazy on the subject of secession; that he considered his primary allegiance due to the United States Government; that he should oppose secession to the utmost of his
35 power; and that whatever the people did, he should remain loyal to the United States to the last."

That, for avowing Union sentiments and denouncing the rebellion, at Augusta, Georgia, during the war, the claimant was waited on by a vigilance committee, arrested, and compelled to leave the town.

That the only relations the claimant had in Savannah during the war were his wife and a nephew; that the claimant opposed his nephew's going into the rebel service, because he was opposed to the war; and the claimant told his nephew that if he would enter that service he need not return to him.

That the claimant did not subscribe to confederate bonds, nor purchase confederate bonds for himself, and discouraged others from doing so; and that he made a purchase of confederate bonds, for and as the agent of one McConnell, for whom he sold a farm.

That the claimant was trusted and confided in as a Union man by some of the Union men of Georgia, among whom were Edward Padelford, Henry Bingham, Benjamin Conley, and others, and recog-

36 nized by them as one of their number; and that his declarations and conversations were in favor of the United States and in opposition to the rebel confederacy and its measues.

That, after the capture of Savannah by the Union forces, in 1865, the loyal men of Savannah organized a Union Club, the object and purpose of which are shown by the following extracts from the preamble and constitution of said club:

"*Preamble reciting the causes and objects of the Union organization in Savannah.*

"Those who have witnessed the inception, progress, developments, results, and evil of the secession scheme in the South, the hatred, persecution and violence manifested towards Union men and women, and even those who were suspected of Unionism—those who have seen the Government, the common heritage of our fathers, traduced, denounced, and violently assailed, the flag of our country insulted and
37 dragged in the gutters of our cities, the chief magistrate of the nation hung in effigy, and, as a result of such teaching, at last massacred in the capital of the nation, feel that the time has come when Union men can, by united efforts, do some good. There has been no period in the history of our country when the beneficial effects of combined harmonious efforts and action of all loyal men have been more apparent than at the present time; especially so, when we see many of the most violent secessionists pretending to the greatest loyalty, a loyalty we know reluctantly forced from unwilling lips, through fear.

To the want of mutual, united action, on the part of truly loyal men of the South, lies the reason that the military authorities have been deceived by unreliable information, and men of Union sentiments have suffered as much as the most bitter and rabid secessionists, those
38 who, a few months ago, would have sold themselves, soul and body, to Jeff. Davis and his confederacy.

"Now that the Federal authorities have resumed their power, it is but just and proper that those Union men, ever true to the stars and stripes, who have never acknowledged allegiance to any other flag, and for this reason have been persecuted, hunted, and compelled to hide in dens, caves, and even tombs of the dead, to avoid being forced into service against their country, should be known and their rights established.

"To this end, and to aid by all possible means the Federal Government and military authorities in restoring law and order, right and justire, and the State of Georgia to her natural and proper relation to the Federal Government, we, the subscribers, citizens of Savannah,
39 and State of Georgia, do hereby associate ourselves together as a thorough Union organization, and adopt the following constitution and laws, pledging our sacred honor to their support:

"*Constitution.*

"ARTICLE I.—THE NAME.

"The society shall be known by the name of the 'Georgia Union Club.'

"ARTICLE II.—THE OBJECT.

"The object of this society shall be to cultivate and encourage

friendly social and political relations with each other irrespective of all past differences and old party ties, and to associate together all loyal Union men, thereby securing concert of action in all matters connected with the welfare and prosperity of the Federal Government, the suppression of treason, and the complete restoration of law and order; and, by all proper and legitimate means, to encourage and promote the growth of Union feeling among all classes of men, and to show
40 the world that we experience a common pride in our common country, and that its flag and its history are ours.

"And to this end we pledge ourselves to support the Constitution of the United States and the amendments thereto.

"To the orders and proclamations of the President of the United States, and to the President and military authorities of the United States, we pledge our cordial support and coöperation.

"ARTICLE III.—MEMBERSHIP.

"In order to make the organization thoroughly Union, and in harmony with the present administration, no person shall become a member who is not twenty-one (21) years of age, and of good moral character.

"No person who voluntarily, and with full knowledge of the nature and effect of his act, voted for secession, or signed the ordnance of secession in any State passing it, or who has been loud and violent
41 in his denunciation of the Federal Government, and of the President and officers of the United States, and in praise of Jeff. Davis and the 'defunct confederacy,' or who has been abusive in his acts and language towards Union men, on account of their being Union men, or who has voluntarily sought after and accepted office under the rebel government for any other purpose than to avoid conscription, shall become a member of this society, at least until they 'show fruits meet for repentance.'

"ARTICLE IV.—OFFICERS.

"The officers of this society shall consist of a president, three (3) vice-presidents, a recording secretary, treasurer, and a committee of three (3) on membership, who shall hold their offices for one year, and until their successors are elected. The election of such officers shall be annually, on the first Monday in May, on which day the annual meeting of the society will take place; and in case of a failure
42 to elect officers on that day, the election shall take place on the first Monday following, in May.

"All other officers and committees shall be appointed by the president, as directed by the by-laws.

"ARTICLE V.—CERTIFICATES.

"This society shall grant to any member in good standing, when requested, in the manner and form provided in the by-laws, a certificate, stating what has been his position towards the rebellion, and in what estimation he is held as a Union man by this society, thereby enabling him to establish his loyalty to his country.

"PLEDGE.

"To the foregoing constitution and by-laws we solemnly pledge our-

selves, and do further solemnly pledge our sacred honor that we will support no man for office who voted for secession or signed the ordinance of secession of any State passing it, or who has been loud and
43 violent in denouncing the Federal Government, the President and officers of the United States, and in praise of 'Jeff. Davis' and his played-out confederacy, or has been abusive in his acts or language towards Union men, on account of their being Union men, or has voluntarily sought after or accepted office under the rebel government for any purpose except to avoid conscription.

"And we further pledge ourselves, upon the honor of gentlemen, that we will not disclose or publish to any person not a member of this club any of its acts or proceedings."

And that the said claimant was elected by the members the first president of the said Union Club, and served in that capacity.

That the claimant never dealt in any munitions of war or goods that were contraband, and never entered into any contracts with the confederate government.

44 In the Court of Claims.

WILLIAM H. STARK
vs.
THE UNITED STATES. } No. 2794.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimant for the allowance of an appeal, as filed in the clerk's office April 12, 1870, and of the order of the court of April 12, 1870, allowing the same; of the motion of claimant for vacating the judgment & appeal in this case, and of the order of the court overruling said motion; & of the findings of fact and conclusions of law on said facts on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 23d day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 477. William H. Stark, appellant, vs. The United States. Court of Claims. Filed 12th January, 1871.

In the Supreme Court of the United States.

DECEMBER TERM, A. D. 1871.

WILLIAM H. STARK

vs.

THE UNITED STATES.

No. 259.

APPEAL FROM THE COURT OF CLAIMS.

ARGUMENT OF THE APPELLANT,

BY

W. PENN CLARKE,
Of Counsel for the Appellant.

WASHINGTON CITY:
PRINTED BY POWELL, GINCK & CO.,
630, 632 F Street,
1872.

In the Supreme Court of the United States.

DECEMBER TERM, A. D. 1871.

WILLIAM H. STARK, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } No. 259.

APPEAL FROM THE COURT OF CLAIMS.

ARGUMENT OF THE APPELLANT.

THE FACTS OF THE CASE.

This action was commenced in the Court of Claims, under the act of March 12, 1863, known as the "captured and abandoned property act," by the claimant and appellant, who is a citizen of the United States, having his home in Connecticut, but who resided in Savannah, Georgia, during the late rebellion, to recover the net proceeds of ninety-one bales of Sea Island, and one hundred and thirty-six bales of Upland cotton, of which he was the owner, which cotton was seized by the United States military authorities after the capture of Savannah, in 1864, and the proceeds of which have been paid into the national treasury. Judgment was rendered against the claimant dismissing his petition. A motion was then made for a rehearing, supported by certain affidavits, which will be found in the record, setting forth among other things, that the said claimant on the 19th of January, 1865, had

taken the amnesty oath prescribed by President Lincoln in his proclamation dated the 8th of December, 1863, which motion was overruled. From the judgment of the court dismissing his petition, and overruling the motion for a new trial, the claimant appeals.

Upon the trial of the cause, the court found the following facts:

1. That prior to the surrender of the city of Savannah, in the State of Georgia, in December, 1864, the claimant was the owner and in possession of ninety-one bales of Sea Island, and one hundred and thirty-six bales of Upland cotton, all of which cotton was stored in said city of Savannah at the time of the surrender or capture of said city.

2. That all of said cotton, after the capture of said city, was seized by officers in the military service of the United States, and subsequently shipped to Simeon Draper, the United States cotton agent at New York, by whom it was sold for the benefit of the United States, and that the net proceeds thereof have been paid into the Treasury of the United States.

3. That the said claimant was a native and citizen of the State of Connecticut, where he had a place or farm which he called his home, and where he spent six months of every year; that he voted, and was regularly taxed in Connecticut; and that his home, when he was absent from it, was occupied by some member of his family, or his servants.

4. That for a number of years before the war, the said claimant was engaged in mercantile pursuits in the city of Savannah, as a member of the firm of Stark, Alexander and Clark, which firm was engaged in a large general grocery and commission business; that the said claimant had a house in Savannah, where he resided six months in the year, or during the winter and fall seasons; and that he exercised none of the rights of citizenship in the State of Georgia.

5. That after the war commenced, the claimant's partners put an estimate upon the partnership property at the rate whereof they were willing to purchase his interest or sell their own. The claimant elected to purchase their interests and remain within the insurgent territory. He did so remain and continued the business on his own account. The amount paid by the claimant to his partners was $26,283 77, but the outstanding debts due to the partnership, amounting to $105,143, remained unsettled between him and his partners.

6. That the first sequestration act of the Confederate States was approved August 30, 1861, the first four sections of which read as follows:

"SEC. 1. *Be it enacted by the Congress of the Confederate States of America*, That all and every the lands, tenements, and hereditaments, goods and chattels, rights and credits, within these Confederate States, and every right and interest therein held, owned, possessed or enjoyed, by or for any alien enemy since the twenty-first day of May, one thousand eight hundred and sixty-one, except such debts due to an alien enemy as may have been paid into the treasury of any one of the Confederate States prior to the passage of this law be, and the same are hereby, sequestered by the Confederate States of America, and shall be held for the full indemnity of any true and loyal citizen or resident of these Confederate States, or other person aiding said Confederate States in the prosecution of the present war between said Confederate States and the United States of America, and for which he may suffer any loss or injury under the act of the United States to which this act is retaliatory, or under any other act of the United States, or of any State thereof authorizing the seizure, condemnation, or confiscation of the property of citizens or residents of the Confederate States, or other persons aiding said Confederate States, and the same shall be seized and disposed of as provided for in the act: *Provided*, however, when the estate, property, or rights to be affected by this act were, or are within some State of this Confederacy which has become such since said twenty-first day of May, then this act shall operate upon, and as to such estate, property, or rights, and all persons claiming the same, from and after the day such State so became a member of this Confederacy, and not before: *Provided*, further, that the provisions of the act shall not extend to the stocks or other public securities of the Confederate government, or of any of the States of this Confederacy held or owned by any alien enemy, or to any debt, obligation, or sum due from the Confederate government, or any of the States to such alien enemy: *And provided, also*, that the provisions of this act shall not embrace the property of citizens or residents of either of the States of Delaware, Maryland, Kentucky, or Missouri, or of the District of Columbia, or the Territory of New Mexico, Arizona, or the Indian Territory south of Kansas, except such of said citizens or residents as shall commit actual hostilities against the Confederate States, or aid and abet the United States in the existing war against the Confederate States.

"SEC. 2. *And be it further enacted*, That it is, and shall be, the duty of each and every citizen of these Confederate States speedily to give information to the officers charged with the execution of this law, of any and every lands, tenements, and hereditaments, goods and chattels, rights and credits, within the Confederacy, and of every right and interest therein held, owned, possessed or enjoyed by or for any alien enemy as aforesaid.

"SEC. 3. *Be it further enacted*, That it shall be the duty of every

attorney, agent, former partner, trustee, or other person, holding or controlling any such lands, tenements, or hereditaments, goods or chattels, rights or credits, or any interest therein, of or for any such alien enemy, speedily to inform the receiver, hereinafter provided to be appointed, of the same, and to render an account thereof, and so far as is practicable, to place the same in the hands of such receiver; whereupon such person shall be fully acquitted of all responsibility for property and effects so reported and turned over. And any such person willfully failing to give such information and render such account shall be guilty of a high misdemeanor, and, upon indictment and conviction, shall be fined in a sum not exceeding five thousand dollars and imprisonment not longer than six months, said fine and imprisonment to be determined by the court trying the case, and further be liable to be sued by said Confederate States, and subjected to pay double the value of the estate, property, or effects of the alien enemy, held by him or subject to his control.

"SEC. 4. It shall be the duty of the several judges of this Confederacy to give this act especially in charge to the grand juries of these Confederate States, and it shall be their duty at each sitting well and truly to enquire and report all lands, tenements, hereditaments, goods and chattels, rights and credits, and every interest therein, within the jurisdiction of said grand jury, held by or for any alien enemy, and it shall be the duty of the several receivers, appointed under this act, to take a copy of every such report, and to proceed in obtaining the possession and control of all such property and effects reported, and to institute proceedings for the sequestration thereof in the manner hereinafter provided. And that the said act was rigidly enforced in the city of Savannah.

7. That after the claimant had purchased the interests of his partners in the firm of Stark, Alexander and Clark, he secretly transmitted, through a friend who escaped through the lines, and in violation of the rebel sequestration act, the funds to pay the debts of said firm, due in New York city; and that the debts thus paid by the claimant amounted to the sum of $15,630 80, the receipts for which the claimant received after the close of the war.

8. That during the war, that is, from 1861 to 1866, inclusive, the property of the claimant in the State of Connecticut, was regularly assessed, and the taxes thereon paid by the agents of the claimant; that the assessed value of the property, in any one year, was less than $7,000; and that there was a mortgage on the real estate for the sum of $2,000.

9. That the claimant returned from Connecticut to the South, in November, 1860, taking his wife with him.

10. That the claimant did not subscribe to Confederate loans, nor purchase Confederate bonds for himself, and discouraged others from doing so; but he subscribed for, and purchased of the Con-

federate States agent, in his own name, bonds for, and as the agent of, one McConnell, for whom he sold a farm.

11. That at the commencement of the rebellion, the said claimant was aged about 42 years; and that he never entered the rebel service, nor took up arms against his lawful Government.

12. That the claimant, during the war, replenished his stock in part with merchandize which he supposed had been introduced into the rebellious States in violation of the blockade established by the United States; that he entered into a speculating project with one Lama, by which they sought to benefit themselves by dealing largely in merchandize, some of which had been brought into Wilmington, N. C., in violation of the blockade; that the said joint purchases were made at Wilmington, by Lama, in open market, and amounted to $180,000; that the transactions of the claimant during the war, in goods supposed to have been brought into the rebellious States in violation of the blockade, and other merchandize and provisions, ranged from $200,000 the first year, up to $500,000 or $600,000 a year in subsequent years, in rebel or inflated currency; and that the claimant had no connection with the blockade running, or persons engaged therein, but purchased said goods, wares, and merchandize, either in open market or from person swho had thus purchased them.

13. That the claimant never dealt in any munitions of war. That the claimant sold goods and merchandize to rebel quartermasters and commissaries, they sometimes calling for them simply as a customer, and sometimes making a formal demand; sometimes paying for the articles when obtained, and at other times having them charged; that in two instances the merchandize of the claimant was impressed, in one of which they were not paid for; and that where the goods were charged on the books of the claimant, they were charged to the officer ordering them by his name and title.

14. That in 1863 or 1864, every one in Savannah not subject to other military duty, was enrolled in the home guard, the claimant among others; that the claimant never drilled or paraded, guarded prisoners, or performed any military duty; and that when ordered out by the mayor, the claimant, with others of the home guard, did police duty, and once attended a casual fire in that capacity.

15. That near the close of the war, after the law compelled the claimant to go into the service, he got himself appointed, with other Union men, upon a hospital committee, whose duty it was to look after the hospitals, which were under the charge of the municipal authorities; and that he obtained this place with a view to keeping out of the military service.

16. That, at the commencement of the rebellion, there was intense excitement in Savannah against persons supposed to be loyal

to the United States, and opposed to the rebellion, which resulted in the formation of vigilance committees and clubs, one of which was called the Rattlesnake Club; that northern men particularly were suspected and kept under surveillance; that these committees and clubs seized and committed personal violence on several persons, paraded the streets openly, and created a state of feeling which prevented loyal men from expressing their opinions, or openly recognizing each other; and that this state of feeling and hostility to those who were suspected of adherence to the Union continued throughout the war.

17. That the conscription laws of the Confederate States were rigidly enforced in the city of Savannah, and throughout the State of Georgia; that the claimant was liable to conscription under the last conscription act passed by the rebel congress; and that Union men and others opposed to entering the rebel service were compelled to resort to various expedients to evade that service.

18. That the net proceeds of the claimant's cotton, which have been paid into the Treasury of the United States, without deducting the internal revenue tax of two cents per pound, amounted to the following:

91 bales of Sea Island at $231 79 per bale	$21,092 89
136 bales of Upland at $175 33	23,844 88
Making a total of	$44,937 77

Upon which facts, the court decided:

1. That the claimant gave aid and comfort to the late rebellion, within the meaning of the abandoned or captured property act, (12 Stat. L., p. 820,) and of the acts amendatory or in furtherance thereof.

2. That judgment should be for the defendants, dismissing the petition of the claimant.

THE ARGUMENT.

It is the purpose of this argument to show that the court below erred:

1st. In holding that the appellant gave aid and comfort to the rebellion, within the meaning of the abandoned and captured property act, and of the acts amendatory to or in furtherance thereof, and in dismissing his petition.

2d. In overruling the motion for a rehearing.

I. *That the court erred in holding that the appellant gave aid and comfort to the late rebellion.*

Upon examining the opinion of the Court of Claims in this case, (4 Court of Claims Reports, 280), it will be found that that court decided against the appellant upon the following grounds:

"1. A citizen of a loyal State who voluntarily remains in an insurrectionary State, merely to avoid selling his property at a loss, who does a large business in goods, knowing the same to be imported in violation of blockade, and who subscribes in his own name, though on behalf of another, to a Confederate loan, renders aid and comfort to the rebellion under the 'abandoned or captured property act.'

"2. The residence of a citizen of a loyal State for the purpose of gain, in a territory where the rebel force holds sway, is that kind of '*voluntary residence*' which the statute (act June 25, 1868), declares shall be *prima facie* evidence of giving aid and comfort to the rebellion.'"

It thus appears that the inquiry presented under this head is two-fold, viz:

1. Whether the residence of the appellant in the rebel States, during the rebellion, was *voluntary* within the meaning of the act of June 25, 1868; and

2. Whether, if such residence was voluntary, the appellant has rebutted the presumption of giving aid and comfort to the rebellion, which such residence created against him, and, in fact, has shown that he did *not* give such aid and comfort?

1. The 3d section of the act of March 12, 1863, required the claimant to prove that he had never given any aid or comfort to the late rebellion. The 3d section of the act of June 25, 1868, added to this requirement, by making it incumbent on him to show affirmatively, that during said rebellion he consistently adhered to the United States, and made the voluntary residence of the claimant in the rebel States, and where that power held sway, *prima facie* evidence that he did give aid or comfort to the said rebel-

lion. In the *Grossmayer* case, 4 C. of C., 1, the Court of Claims gave a construction to this latter statute, holding that it did not impose additional or more stringent conditions of recovery than was required by the act of 1863, and that the main fact to be proved is, that the claimant had not given any aid or comfort to the rebellion. And in the case of *The United States* v. *Padelford*, 9 Wallace, 538, this court, referring to the act of 1868, says: "We do not think that this act changed essentially the nature of the proof required of claimants by the former act. The particular description of proof required by the later act, seems to be included in the more general description of the earlier." Both courts are, therefore, in accord in the construction of the 3d section of the act of 1868. Prior to the passage of the act, the law presumed that all persons voluntarily residing within the rebel territory were in sympathy with the rebellion. The only effect of the statute is to enact into a positive law that which existed before that time as a presumption of the law, and the presumption, as well as the statute, threw upon the party claiming to have been loyal, the burden of proving that he had given no aid or comfort to the rebellion, and had consistently adhered to the United States.

What, then, are the facts in this case, tending to show that the residence of the appellant in the rebel States was voluntary, for if *not* voluntary, no presumption exists against him? It is shown that the appellant was a native citizen of the State of Connecticut, where he had a place, which he called his home, where he spent six months of every year. He voted and was regularly taxed in Connecticut. He exercised none of the rights of a citizen in Savannah, and his residence there six months in the year was only for business purposes. When he was absent from Connecticut, his home was occupied by some member of his family or his servants, and during the whole of the

war his taxes were regularly paid by his agents. He left his Connecticut home in November, 1860, for the South, taking his wife with him. From these facts, it is clear that during all the time of the appellant's absence from Connecticut, from November, 1860, till his return in 1865, his legal residence was in the North, and so far as they go, they tend to show that his absence from his home, to which he was in the habit of returning every six months, was involuntary, and occasioned by the breaking out of hostilities between the North and the South. He went South before those hostilities commenced, and at a time when few persons, if any, believed that the Southern people would break out into open rebellion. If the apellant had anticipated what was to follow, does any one believe he would have taken his wife with him and exposed her to all the dangers and horrors of that terrible period? The appellant went to the South, not anticipating rebellion, in the pursuit of his lawful and legitimate business. He had been for years connected with, and the leading member of, a large mercantile house. The labor of years was involved in its transactions—the wealth of a life-time included within the pages of its ledgers. His all was in Savannah, for the record shows that his property in Connecticut was only assessed at $7,000, upon which there was a mortgage of $2,000, (see Fact No. 8,) while it also establishes that the stock of the firm was of the value of $26,283 77, and the outstanding debts due it amounted to the sum of $105,143. (See Fact No. 5.)

Suddenly and unexpectedly—to the appellant as well as the whole country—the civil war was inaugurated. The city of Savannah was at once seized with a phrenzy of excitement. (See Fact No. 16.) Persons supposed to be loyal to the United States, and Northern men particularly, were suspected, watched, and kept under surveil-

ance. Self-constituted committees and clubs in the interest of the rebellion paraded the streets openly, and seized and committed personal violence on those supposed to be opposed to the proceedings of the rebels. Loyal men were intimidated and deterred from expressing their opinions, or openly recognizing each other, and this state of feeling and hostility to those suspected of adherence to the Union continued throughout the war. In this state of affairs, and whilst thus surrounded, the appellant committed the act which, in the opinion of the court below, fixed his destiny, and here it is, as found by the court itself:

5. That, after the war commenced, the claimant's partners put an estimate upon the partnership property at the rate whereof they were willing to purchase his interest or sell their own. The claimant elected to purchase their interests and remain within the insurgent territory. He did so remain and continued in business on his own account. The amount paid by the claimant to his partners was $26,283 77, but the outstanding debts due to the partnership, amounting to $105,143, remained unsettled between him and his partners. Record, 8.

The circumstances under which this purchase was made by the appellant are fully stated in one of the facts which the court refused to find, and which has been certified to this court under the fifth rule, as follows:

That, after the war commenced, a dispute arose between the said claimant and his partners as to the payment of the debts owing by the firm at the North, the claimant insisting on their payment, and the other partners proposing to make return of, and pay them to the rebel authorities under the sequestration acts of the Confederate States; that the said claimant endeavored to sell out his interest in the firm to his partners, so that he could leave the South; that his partners placed so low an estimate on his interest that they could not agree; that the claimant, in order to protect himself, and secure the payment of the northern creditors of the firm, purchased the interest of his partners in the stock of goods then on hand, for the sum of $26,283 77; that when the claimant made this purchase, the outstanding debts due to said firm amounted to the sum of $105,143, which remained unsettled between the said partners, and that after said purchase the said claimant continued the business on his own account. Record, 12.

This statement is supported by, and a part of, the very evidence from which the court found the fact of the purchase; but the court below, either because it did not deem the facts embraced therein "ultimate facts," or for some other reason which may be inferred, but cannot be stated here, refused to find as requested, and substituted its own finding, as given above. The only evidence upon this subject was furnished in the deposition of the claimant and appellant, who was made a witness by the defendant, and the court below, in ignoring a portion of that testimony, and making up a finding of facts that would support its own conclusions of law, rendered gross injustice to the appellant.

But let us take the fact as found by the court and analyze it. In considering the statement, we are entitled to draw such inferences as legitimately arise. The presumption is, that the partners of the appellant were rebels, and this presumption is not contradicted by the record. They "put an estimate upon the partnership property, at the rate whereof they were willing to purchase his interest, or sell their own." This indicates a difference between the partners, and the willingness of the claimant to dispose of his share in the partnership. It will readily be conceived that the rebel partners supposed, in the high state of excitement existing against northern men, that they had the claimant at a disadvantage, and felt able to compel him to submit to their terms. He took them up on their own terms, but what did he purchase? Not the whole interest of the partnership, but the stock on hand merely, leaving the debts due the firm, amounting to $105,143, unsettled between them. That the motive of the appellant in thus purchasing the stock on hand, was a good and lawful one, is shown by fact five, from which it appears that after having purchased the stock, and thus got rid of his partners, "he secretly transmitted, through

a friend who escaped through the lines, *and in violation of the rebel sequestration act*, the funds to pay the debts of said firm in New York," which amounted to $15,630 80, and the receipts for which he received after the close of the war. It may fairly be inferred, then, his partners being rebels, that these Eastern debts were the source of the difficulty between the members of the firm—the *loyal* man insisting on their payment. and the rebels being disposed to rob their creditors, and report the debts to be sequestered by the Confederacy. This could be the only cause of difficulty between them, growing out of the then existing state of affairs, and the appellant, like a high-toned honorable merchant, gave up the large assets of the firm, that he might obtain control of the stock, and thus liquidate the Eastern liabilities for which he was responsible. If he had been in sympathy with the rebellion, this difference could never have existed, but he would have concurred with his partners, and the money have been paid into the coffers of the rebel treasury. That the appellant exposed himself to great danger in thus violating the rebel sequestration act, by the payment of the Eastern debts of the firm, will be apparent by reference to the statute, the essential portions of which are contained in the record.

In view of all the circumstances by which the appellant was surrounded, and the inferences to be drawn from the transaction, was the claimant's purchase of his partners' interest in the firm, which necessitated his remaining within the rebel territory, a voluntary residence within the meaning of the statute?

To say of a man, thus situated, that he *voluntarily* chose to remain in the South, is a misuse of words. He could do but one of two things—sell out and leave, or remain and protect his own interests and those of others to whom he was under obligations. He made an effort to do the former. His partners refused his propositions. They in-

tended to swindle him and their northern creditors. To prevent this, he was compelled to remain. The law never imputes a bad motive to an act proper in itself. Here the act and the motive are in harmony, and neither were detrimental to the interests of the United States. The claimant felt as every honorable merchant ought to feel, and acted as every honorable merchant would act, under similar circumstances—he was anxious, first, to pay his creditors, and then to save what he could for himself and his family. The law of self-preservation—the villiany of his rebel partners—the force of circumstances which he had no power to control—conspired to require him to stay in Savannah; and his remaining in the South was no more voluntary than is the desperate act of a man who is impelled thereto by the desire to preserve his own life, or prevent some other great calamity. The word *voluntary*, is defined by Webster as follows: "Done freely, or of choice; proceeding from free will;" "acting of his own accord;" "free, or having the power to act by choice; not being under restraint." And *involuntary* is the very converse of this. Thus, the same author defines the word as follows: "Not having will or choice;" "independent of will or choice;" "not proceeding from choice;" "not done willingly." Now, it was the claimant's will or choice, to sell out and leave the South; to this end, he made propositions to his rebel co-partners, which they peremptorily declined; they refused to make any arrangements by which the payment of the debts due the northern creditors might be secured; and to prevent injury to them as well as himself, the claimant, not of his own choice or will, but from the necessity of the case, was compelled to buy out his co-partners and thus remain in the South. And to hold that in thus remaining, in discharge of a duty which he owed to others as well as himself, he became a voluntary resident under rebel sway, under the third sec-

tion of the act of June 25, 1868, is a most harsh and unreasonable construction of the statute. The law never requires a useless or vain thing, and it would have been both useless and vain, without any compensating benefit to the Government, if the appellant had sacrificed all his pecuniary interests, and virtually beggared himself and family, merely that he might remove himself from "territory where the rebel force held sway."

2. And this brings me to the second branch of the inquiry. Suppose that we concede that the court below did not err in holding that the appellant's residence in "territory where the rebel force held sway," was voluntary. The only effect of that concession is to throw upon the appellant the burden of showing that he did not, in fact, give aid and comfort to the rebellion—he must rebut the *prima facie* evidence which that residence created.

In the case of *Grossmayer*, before cited, the Court of Claims, in speaking of the acts of March 12, 1863, and June 25, 1868, says:

> The "aid or comfort" denounced in these acts is such as forfeits a man's property, outlaws him from the courts of his country, to which loyal men have free access, deprives him of rights which they enjoy, and stamps him as guilty of, at least, incipient treason. Such legal consequences never flow from innocent motives and conduct. The "aid or comfort" which is visited with such disqualifications and penalties, are not mere indifferent facts, but vicious and criminal acts. To constitute them such, they must have been committed with intention and for the purpose of aiding the rebellion and promoting its power and success, or from improper motives. To do any act which tended to support the rebellion, where no other motive is apparent or proved, is evidence of bad intention; for every man is presumed to intend the natural result of his actions. But where the whole conduct and life of a man has been consistent with his allegiance to his country, and a single act of a doubtful motive is presented, and which may have resulted from fear, affection or humanity, his character, his general character for loyalty, should turn the scale.—4, C. of C., 1.

Regarding this as a correct exposition of the statutes, let us try the appellant's case by the rules here laid down.

Before resorting to the facts, however, allow me to preface them with a remark or two. In determining upon the conduct and motives of men, it is essential to a correct judgment, that we should place ourselves in their position; that we should endeavor to see the facts in the same light in which they appeared to them; and that we should bear in mind the dangers and temptations by which they were surrounded. In this case, the claimant has been judged from no such standpoint. One material fact, which ought to be permitted to have great weight, is that he was a *Yankee*, and a Connecticut one, at that. He neither claimed, nor exercised any of the rights of a citizen of the South. He was there merely for business purposes. His very position, in the phrenzy by which he was surrounded, rendered him an object of suspicion, and exposed him to danger. He stood there alone, a solitary man, beyond the meridian of life, with no support or comfort in the hour of trial, save the society of his aged wife. Caution and prudence were required at his hands. His personal welfare and safety demanded both. Bearing these things in mind, then, let us ascertain what facts are established, tending to show that he rendered no aid or comfort to the rebellion, but conscientiously adhered to the United States. It is proven:

1. That the appellant, after the purchase of the interest of his co-partners in the firm to which he had belonged for many years, in violation of the rebel sequestration acts, transmitted to New York clandestinely the funds to pay the Eastern debts of said firm, amounting to over $15,000. What rebel ever did such an act as this?

2. That during all the war, his taxes in the loyal States were regularly paid by his agents.

3. That he never subscribed to confederate loans, nor purchased confederate bonds for himself, and discouraged others from so doing.

4. That he had no connection with blockade running, or persons engaged therein.

5. That he never dealt in any munitions of war.

6. That he never entered the rebel service, nor took up arms against his lawful Government.

7. That although, in common with others, he was enrolled in the home guard, he never drilled or paraded, guarded prisoners, or performed any military duty.

8. That near the close of the war, after the law compelled him to go into the service, he got himself appointed, *with other Union men*, [This is the language of the fact as found by the court.] upon a hospital committee, whose duty it was to look after the hospitals, which were under the charge of the municipal authorities; and that he obtained this place with a view to keeping out of the military service.

9. And that the conscription laws of the Confederate States were rigidly enforced in the city of Savannah and throughout the State of Georgia; that the claimant was liable to conscription under the last conscription act passed by the rebel Congress; and that Union men, and others opposed to entering the rebel service, were compelled to resort to various expedients to evade that service.

These are the leading facts on which the claimant relies to prove that he conscientiously adhered to the United States, and rendered no aid or comfort to the rebellion. If, in the language of the opinion of the court in the *Grossmayer* case, "the 'aid and comfort' denounced in the acts of March 12, 1863, and June 25, 1868," "is such as forfeits a man's property, outlaws him from the courts of his country, to which loyal men have access, deprives him of rights which they enjoy, and stamps him as guilty of, at least, incipient treason," certain it is that the claimant has shown *affirmatively* that he has rendered no such aid and comfort, nor committed any act, which any

court would hold "stamps him as guilty of, at least, incipient treason." If "the 'aid and comfort' which is visited with such disqualifications and penalties, are not mere indifferent facts, *but vicious and criminal acts*," "*committed with the intention, and for the purpose of aiding the rebellion, and promoting its power and success, or from other improper motives*," then it is clear, that no such "vicious and criminal acts," committed with any such improper motives, are shown; and upon the principles laid down by that court in these cases, the claimant must be held to have established the negative proposition, that he never rendered any aid or comfort to the late rebellion, and that he consistently adhered to the United States. And having proved under the act of 1868, that the claimant "did during said rebellion, consistently adhere to the United States," and under the act of 1863, that "he never gave any aid or comfort to the rebellion," we ask, quoting again from the opinion in the *Grossmayer* case, "has he not in effect proved all that both acts require?" In other words, by proving that he never gave any aid or comfort to the rebellion, and that he consistently adhered to the United States, he rebuts the presumption—the *prima facie* case—which the act of 1868 raises against him, growing out of his residence where the rebel power held sway; and if the doctrine laid down in the case just cited is the law, as we believe it is, then the judgment in this case must be set aside.

So far, it will be conceded, the established facts are all in favor of the appellant, and show that he afforded no aid or comfort to the late rebellion. But the court below, ignoring these evidences of the adherence of the appellant to the United States, decided on other facts against him. Those facts are:

1. That he subscribed for, and purchased of the Confederate States agent, in his own name, bonds for, and as the agent of, one McConnell, for whom he sold a farm.

2. That during the war, he replenished his stock in part with merchandize which he supposed had been introduced into the rebellious States in violation of the blockade established by the United States; that he entered into a speculating project with one Lama, by which they sought to benefit themselves by dealing largely in merchandize, some of which had been brought into Wilmington, N. C, in violation of the blockade; that the said joint purchases were made at Wilmington, by Lama, in open market, and amounted to $180,000; that the transactions of the claimant during the war, in goods supposed to have been brought into the rebellious States, in violation of the blockade, and other merchandize and provisions, ranged from $200,000 the first year, up to $500,000 or $600,000 a year, in subsequent years, in rebel or inflated currency, but that said goods, wares, and merchandize were purchased either in open market, or from persons who had thus purchased them.

These are the only facts relied upon to sustain the conclusion of the court below, that the appellant gave aid and comfort to the rebellion. That they do not themselves, *per se*, constitute aid and comfort will be apparent at once. If vicious at all, they depend upon the motive with which the acts were committed. If the *intention* was to give aid and comfort to the rebellion, then the party by whom the acts were committed, is guilty to that extent. In the *Grossmayer case*, the court below recognize this doctrine, and to the same purport are the following:

United States vs. *Pryor*, 3 Wash. C. C., 234.
Republica vs. *Malin*, 1 Dallas, (Penn.) 33.
Republica vs. *Carlisle*, 1 Ib., 35.
1 Story's C. C., 614.
United States vs. *Greathouse*, 2 Abbott's C. C., 364.

And the words used in connection with the act done, may be given in evidence to show the intent. It is true,

also, that the law presumes that a man intends that which is the natural result of his acts. Thus, if a man shoots another, or strikes him in the heat of passion, a heavy blow with a deadly weapon, and death ensues, the law presumes that the assailant intended to take life. Recognizing these principles, let us, then, examine the charges against the appellant, upon which the court below decided adversely to him, and determine whether the intent to aid the rebellion is the natural result of those acts.

1. *That he purchased Confederate bonds, in his own name, as the agent of another person.* It will scarcely be claimed that any intent to give aid and comfort to the enemies of the Union, is apparent from this circumstance, nor does it follow that such was the natural consequence. They were bought with the funds of another party, for whom the appellant had sold a farm, and it is hardly reasonable to suppose that the amount of money invested, was large enough to enhance the value of the rebel bonds in the markets of the world, or to greatly increase the funds of the rebel treasury. It is possible that they were bought in the name of the appellant, without any thought at all about the matter, or that they were so purchased at the instance of the principal, for some reason satisfactory to himself. But whatever the cause for the purchase of the bonds in the name of the agent, instead of the principal, the circumstance itself, when set off against all the findings of fact establishing the adherence of the appellant to the Union, is too trivial to have any significance, or override the facts which demonstrate his loyalty. No wrongful intent being shown by the fact itself, and none having been proved, the presumptions of the law are entirely in favor of the innocence of the appellant.

2. The second charge amount to this: *that the appellant, being a merchant, replenished his stock, and dealt largely in goods that he supposed had been introduced into the re-*

bellious States in violation of the blockade established by the United States. It will be noticed that the court below acquits the appellant of any "connection with blockade running, or persons engaged" in that unlawful occupation; and that the goods thus purchased by him, or by his associate, Lama, were bought either in open market, or from persons who had thus purchased them.

Admitting, then, that some of the goods purchased by the claimant, had been imported into the country in viotion of our law of blockade, I inquire what criminality attached to the purchase, or how does it denote a want of adherence to the Union? These goods, as the facts show, were bought in open market, without any participation in the illegal act on the part of the purchasers, or any actual knowledge that they had been so imported. Without having before me the act establishing the blockade, I venture to assert that it does nothing more than provide for the condemnation of the vessel and cargo, if seized in the illicit trade, and contained no provision which tainted the goods, after they had been sold in open market to third parties. In the nature of things, it could not be otherwise. A blockade is a war measure, and pre-supposes a state of conflict between two parties. Goods imported into a country in violation of a blockade, do not stand on the same footing as those smuggled in in violation of the revenue laws of the country. In the latter case, the goods so imported, are liable for the duty to which they are subject, in whosoever hands they may be, and they may be followed and seized so long as they can be identified. But with reference to goods which have run a blockade, the law is uniform and well settled that the offence is purged by the successful termination of the voyage. This docrine is amply sustained by the following authorities:

Chitty's Law of Nations, § 145, 146.

Wheat. Inter. Law, 3d ed., § 550.

Wooley's Inter. Law, 2d ed., § 182.
1 Kent's Com., 151.
The Nancy, 3 C. Rob., 126, 127.
The Weelvaart, 2 Ib., 128.
The General Hamilton, 6 Ib., 62.
The Joseph, 8 Cranch, 454, 455.

This being the law, it cannot be claimed on any legal ground, that the claimant was guilty of any turpitude, moral or political, in dealing in these goods. To purchase them resulted in no injury, and was no act of hostility, to his lawful government. While encircled in the fiery tempest of the rebellion; suffering from the losses it had occasioned him; being robbed by its agents and leaders, he had the right to live, and to make that living off those who were his oppressors. If he speculated in their markets and realized profits at their expense, rebels, not Union men, were the sufferers. Shall this be imputed to him as a crime? He dealt in no munitions of war, or other articles that were contraband. He knew that the large indebtedness due his firm, would ultimately be lost to him, in the ruin of his debtors with the collapse of the rebellion; the labor of thirty years' toil had been dashed to pieces and scattered to the winds; and in trying to make up his losses off of those who had brought this trouble on his head, he did only that which was natural and reasonable, and which was entirely consistent with the allegiance he owed his lawful government. Yet this act, perfectly legal in itself, which worked no injury to the cause of the Union, is one of the pretexts used to sustain the decision of which the appellant complains.

The appellant had the legal right to carry on his business as a merchant so long as he remained within the rebellious States. No act of Congress, so long as he confined his operations within the rebel lines, restricted that right. And such is virtually the decision of this court in the case

of *The United States* vs. *Anderson*, 9 Wallace, 56. In that case, which was brought under the "captured and abandoned property act," it was claimed by the Attorney General, for the appellant, that the claimant's title to the cotton failed, for the reason that it had been purchased from presumed rebels. This view was repudiated by the court, Judge Davis, who delivered the opinion, saying:

"This is an attempt to import from the confiscation law of July 17, 1862, into this law, a disability which it does not contain. If this could be done, but very little benefit would accrue to the loyal people of the South from the privilege conferred on them by the law in question. It is well known that nearly all the Southern people were engaged in the rebellion, and that those who were not thus employed furnished the exception, rather than the rule. *Few as they were, the necessities of life required that they should buy and sell, and, equally so, that their trading should be free and unrestricted.*"

If I am correct in this view of the law, then, it follows that the appellant not only possessed the right of trading, "free and unrestricted," but that the purchase and sale of goods, wares, and merchandize, which he *supposed* had been brought into the States in rebellion, in violation of the blockade established by the United States, but in which illegal act he did not participate, was strictly legal, and in no way affects his loyalty. Being legal, it was no act of aid and comfort to the enemies of the nation, and no wrongful intent can be inferred from it. And this view demonstrates the error of the court below, in rejecting his claim, and dismissing his petition, on the ground that he had dealt in blockade goods.

But suppose it is conceded, that the purchase of Confederate bonds by the agent in his own name, instead of that of his principal, and the purchase of goods, wares, and merchandize which the appellant supposed had been introduced into the rebel States in violation of the blockade established by the United States, constituted aid and comfort to the rebellion, these offences had been condoned,

and could no longer be imputed to him. These acts had been wiped out, and the appellant was no longer guilty of "incipient treason." President Johnson, by his proclamation of the 25th of December, 1868, had proclaimed and declared, "unconditionally, and without reservation, to all and every person who directly or indirectly participated in the late insurrection or rebellion, a full pardon and amnesty for the offence of treason against the United States, or of adhering to their enemies during the late civil war, with restoration of all rights, privileges, and immunities under the Constitution and the laws which have been made in pursuance thereof." This general pardon and amnesty, ordained by the President, by virtue of the pardoning power conferred by the Constitution and the laws, had the force of law, and it was the duty of the court below to take judicial notice of its existence, and give to each claimant the benefit of the proclamation. *Ex parte Garfield*, 4 Wallace, 380; *The United States* v. *Padelford*, 9 Wallace, 542. This proclamation of the President relieved the appellant of any offense which he may have been forced to commit, and was in full force when the judgment against the appellant was rendered by the Court of Claims. This will appear from the record, (page 4), which shows that the judgment dismissing the petition, was entered on the 28th of March, 1870. The appellant had then been pardoned; to use the language of this court in the case of Padelford, "he was purged of whatever offence against the laws of the United States, he had committed by the acts mentioned in the findings," and "was relieved from any penalty he had incurred;" and the appellant having been thus purified from the taint of treason, the court erred in holding that he had given aid and comfort to the rebellion, and wrongfully dismissed his petition. See also, the Klein case, decided at this term.

II. The second ground of error is, *that the court below erred in overruling the motion for a rehearing or a new trial.* I am well aware that a motion of this character is addressed to the sound discretion of the court before which it is made, and that it is the rule of this court that the overruling of such a motion cannot be assigned for error here. In most, if not all, of the cases, however, in which this ruling has been made, the motions were based on errors of the court alleged to have taken place on the trial, and only sought a review of the case at the hands of the judge before whom the same was tried. When the cases reached this court, the alleged errors were generally, if not always, presented on the record, without regard to the motions for a new trial; and hence the decisions that the overruling of the motions could not be assigned for error. This I believe to be the reason for these decisions; and did the motion for a new trial in this case set up no new and substantive matter, I should not now press it upon the attention of the court. The motion will be found in the record, (page 4,) from which it will appear that the ninth ground upon which the new trial was asked, was that the claimant could show that, upon the capture of Savannah, and before the seizure of his cotton, he took the oath of amnesty required by the proclamation of the President, dated 8th of December, 1863, and has faithfuly observed the same ever since. This set up new matter, which should have demanded the attention of the court in view of its own previous rulings, and the decisions of *this* court, overruling those decisions.

Before the trial of this cause before the Court of Claims, that court had decided, (*Pargoud's Case*, 4 C. of C., 337,) that Congress had limited the jurisdiction of the court in cases under the act of March 12, 1863, to those who gave no aid and comfort to the rebellion, and that neither pardon nor amnesty could be pleaded or offered in

evidence in support of a claimant's right of action. It had also determined (*Pargoud's Appeal*, 4 C. of C., 349), that in cases under said act of March 12, 1863, the claimants were not entitled to an appeal. The court thus held that it had the exclusive jurisdiction of this class of cases, and thus claimants and their solicitors were, as it were, at the mercy of the court. The statute under which the suits were brought was ruled most strictly against the claimants. The whole proceeding was new and unsettled. It was not deemed wise on the part of members of the bar, to excite the hostility of the court against the claimants, by making war upon its decisions; and in this state of uncertainty—I had almost said fear—the decision in this case, adverse to the claimant was announced, and the motion for a new trial was made, and continued till the next term of the court. At the next term, December, 1869, the motion was overruled. At the same term of this court, both of the decisions of the Court of Claims in the *Pargoud Cases* were overruled, (*Ex parte Zellner*, 9 Wallace, 244; *The United States* vs. *Padelford*, 531,)—thus not only securing to claimants the right of appeal, but sustaining the right to offer in evidence pardon and amnesty. A motion was then made in this case by the appellant, (Record, 7,) to vacate the appeal which had been allowed on his motion, and to remand the cause to the general docket for additional evidence, for the very purpose of setting up the amnesty oath of the claimant, which motion, at the December term, 1870, was overruled. *Stern et al.* vs. *The United States*, 6 C. of C., 280.

From this history of the case, it will be apparent that gross injustice was done to the claimant by the court, at a time when he deemed himself without remedy, and that a grave error of law was committed in overruling the motion for a new trial; and it is this history, that in my judgment, takes the case out of the rule established by

this court in reference to motions for a new trial. This statement of the facts is the only argument that I deem it necessary to make upon this point, and if the court should concur in the view taken of the question, it will reverse the judgment below, because of this error, if for no other.

In conclusion, I have only to say: That the whole case is before this court on appeal; that it can review the facts, as well as the questions of law, involved; and that if satisfied that substantial injustice has been done the claimant, and that he is entitled to recover the net proceeds of the cotton of which he was the owner, which have been paid into the national treasury, and the amount of which is stated in the record at $44,937 77, the court is respectfully requested to reverse the judgment, and direct the court below to enter a judgment in favor of the claimant for the amount above named.

Respectfully submitted.

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Of Counsel for Appellant.

